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IN THE

Supreme Court of the United States

No. 90 October Term, 1932.

ANNA S. BAINBRIDGE,
Petitioner,

v.

MERCHANTS & MINERS TRANSPORTATION COMPANY.

BRIEF FOR RESPONDENT.

HOWARD H. YOCUM,
Counsel for Respondent.

FRANK H. MASSEY, 2D,
JAMES M. WEST, 3D,
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MERCHANTS & MINERS TRANSPORTATION COMPANY.

BRIEF FOR RESPONDENT.

I.

STATEMENT OF THE CASE.

The statement of the matter involved, as set forth in the Brief for the Petitioner, is substantially accurate. Negligence, however, is not admitted by the Respondent.

The Merchants & Miners Transportation Company, the Respondent, is a corporation authorized and existing under and by virtue of the laws of the State of Maryland, having its principal office in the City of Baltimore, Maryland (R., 4). It was registered under the Act of Assembly of the Commonwealth of Pennsylvania of June 8, 1911, P. L. 710, requiring foreign corporations, as a precedent to doing business in Pennsylvania, to register and appoint the Secretary of the Commonwealth their agent for the service of process (R., 4). The process, issued by Court of Common

Pleas No. 4 of Philadelphia County, was served upon the Secretary of the Commonwealth of Pennsylvania under the provisions of the Act of June 8, 1911. An appearance *de bene esse* was entered in the action on behalf of the Respondent for the purpose of objection to the jurisdiction of the Court out of which the process issued (R., 1, 4). No issues other than those relating to the jurisdiction of the Court have been joined in the cause.

II.

ARGUMENT.

Summary of Argument.

1. The venue clause of Section 33 of the Merchant Marine Act of 1920 was intended by Congress to apply to all actions brought under the Act, whether in State Courts or in Federal Courts.

2. Congress has power to create a privilege of exemption from suit in State Courts, established elsewhere than in the District in which the defendant resides, in causes of action arising under the laws enacted by it.

3. The limitation upon the power of the Congress contended for by Petitioner, and the interpretations placed upon the Statute by Petitioner, would destroy the uniformity of the maritime law.

I. The Venue Clause of Section 33 of the Merchant Marine Act of 1920, Was Intended by Congress to Apply to All Actions Brought Under the Act, Whether in State Courts or in Federal Courts.

The question this Court is asked to decide is whether the venue clause of Section 33 of the Merchant Marine Act of 1920, applies to all actions brought under the Act or whether it applies only to actions brought in the courts of the United States. The language of the Section is as follows:

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury and *in such action* all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as the result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction *in such actions* shall be under the court of the district in which the defendant employer resides or in which his principal office is located." (Italics ours.)

There is certainly no language in the venue clause or in the whole Section expressive of an intention to confine its qualifications with respect to jurisdiction to the Federal Courts. The use of the singular "court" and the use of the word "district" do not indicate such an intention. The learned judge of Court of Common Pleas No. 4 of Phila-

delphia County in his opinion (R., 7), has effectively answered this contention of petitioner. See also *Petterson* v. *Standard Oil Co. of New Jersey*, 41 Fed. (2d) 219 (S. D. N. Y., 1924). On the other hand the use of the words "*in such actions*" clearly evidences legislative intent that the venue provision shall apply to all actions brought under the Act. The Act grants to seamen an election to maintain an action for damages at law. It provides that "*in such action*" the maritime law theretofore applied shall be modified by granting to seamen the benefits of Statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees. It limits the jurisdiction *in such actions* to the district in which the defendant employer resides or in which his principal office is located.

This Court has already explained the meaning of the phrase "*in such action*" in *Panama R. R. Co.* v. *Johnson*, 264 U. S. 375, using the following language (p. 391):

> "The words 'in such action' in the succeeding clause are all that are troublesome. But we do not regard them as meaning that the seaman may have the benefit of the new rules if he sues on the law side of the court, but not if he sues on the admiralty side. Such a distinction would be so unreasonable that we are unwilling to attribute to Congress a purpose to make it. A more reasonable view, consistent with the spirit and purpose of the statute as a whole, is that the words are used in the sense of 'an action to recover damages for such injuries,' the emphasis being on the object of the suit rather than the jurisdiction in which it is brought."

Under familiar principles of statutory construction the phrases, "*in such action*" in the body of the Section,

and *"in such actions"* in the venue clause, should receive a like interpretation. See *Bannon* v. *Seaboard Air Line Ry. Co., et al.*, 52 Fed. (2d) 886, 888 (D. C. S. D. Ga.). And this Court has given them such like interpretation. In *Panama R. R. Co.* v. *Johnson,* supra, the Court says (p. 384):

> "A reading of the provision (the venue clause) . . . makes it reasonably certain that the provision is not intended to affect the general jurisdiction of the District Courts as defined in § 24, but only to prescribe the venue for *actions brought under the new act* of which it is a part." (Italics ours.)

The proceedings in Congress confirm this interpretation. The Merchant Marine Act of 1920 originated in the House of Representatives as House Resolution 10378, Sixty-sixth Congress, Second Session. As passed by the House of Representatives the bill did not contain what is now Section 33. The Senate added among other amendments to the bill, the present Section 33 with one important omission. As passed by the Senate the venue clause was not included in this Section. (Senate Reports, Second Session, Sixty-sixth Congress, Report No. 573, Calendar 520.) It was evidently the intention of the Senate that the venue provisions of Section 6 of the Employers' Liability Act should govern actions brought by seamen under the proposed amendment. The House having declined to concur in certain Senate amendments, including the amendment under discussion, the bill went to conference. In conference the Senate amendment was further amended by adding thereto the venue clause, "Jurisdiction in such actions shall be under the Court of the district in which the defendant employer resides or in which its principal office is

located." (Sixty-sixth Congress, Second Session, House Reports, Vol. 3, Report No. 1093.) The conference report is dated June 2, 1920; the Act was passed two days later, incorporating the amended Section 33 as recommended by the conferees.

It is apparent that the House was unwilling to make such a sweeping extension of shipowners' liability as this Act contemplated, without granting to them some protection in the qualifying privilege of having actions under the Act tried where the shipowner is best able to defend them. The practical aspects of the change clearly show the reasons behind the House's concern. Before the passage of the Merchant Marine Act of 1920, the liability of shipowners to members of their crews was confined to maintenance and cure and wages, and in the case of a vessel's unseaworthiness, to indemnity. While both of these types of liability involved the possibility of litigation, the litigation presented questions of a relatively simple character. The evidence necessary for the defense of such litigation was readily available or within the shipowner's control. The jurisdiction in which the shipowner was called upon to defend such litigation was less material, because the issues of fact were simpler, the evidence was reasonably obtainable, and the questions involved were such that a substantial degree of uniformity was assured. From the earliest beginnings of the maritime law down to the passage of the Jones Act, this relatively simple system of maritime rights and obligations in cases of personal injury had prevailed.

The passage of the Merchant Marine Act of 1920, introducing liability for the negligence of fellow servants into the maritime law and otherwise changing the responsibility of the shipowner not only subjected the ship-

owner to increased litigation but rendered vastly more difficult the defense of litigation arising out of injuries to seamen. The issues of fact are much more complicated. The evidence which may be necessary for proper defense must in many cases be obtained from sources which are not readily available or within the shipowner's control. This increased burden upon the shipowner would be aggravated, if he were obliged to defend in any jurisdiction in which service of process might be obtained. It would be relieved in material measure, if the shipowner was obliged to defend only in the district in which the defendant resides or in which his principal office is located.

These considerations would very properly move Congress to insert the limitation in the new right of action created by the Merchant Marine Act that the jurisdiction in such actions shall be under the Court of the district in which the defendant employer resides, or in which his principal office is located. It is obvious that they are equally applicable whether the actions under the Act be brought in State or Federal Courts, as the learned Judge of the Court of Common Pleas of Philadelphia County correctly decided. Congress has created a new right in one party to a maritime relation, and has also created at the same time, and as a necessary incident to the extension of the prior right of such party, a privilege in the other party. Its intention to do so is clearly evidenced in the reasonableness of the provision, the circumstances under which the jurisdictional provision was written into the Act, and by the express provisions of the Statute as enacted.

II. Congress Has Power to Create a Privilege of Exemption From Suit in State Courts, Established Elsewhere Than in the District in Which the Defendant Resides, in Causes of Action Arising Under the Laws Enacted by It.

This Court has frequently affirmed the principle inherent in our dual system of government, that lawful rights of the citizen, whether arising from a legislative exercise of state or national power, unless excepted by express constitutional limitation or valid legislation to that effect, are concurrently subject to be enforced in the courts of the state or nation when such rights come within the general scope of the jurisdiction conferred upon such courts by the authority, state or nation, creating them. *Minneapolis & St. L. R. Co.* v. *Bombolis*, 241 U. S. 211, 221.

The Courts of the several states have concurrent jurisdiction with the Federal Courts, of all cases arising under Federal Statutes, unless exclusive jurisdiction is vested in the Federal Courts by the Federal Constitution or by Congress.

The jurisdiction thus exercised by the state courts is not conferred upon the state courts by Congress. In hearing and determining such causes of action based on Federal Statutes, the state courts exercise their own inherent jurisdiction.

The Judiciary Act of 1789 in its *savings to suitors clause* permitted the enforcement of a right sanctioned by the maritime law through any appropriate proceeding recognized at common law. And the right of action established by the Merchant Marine Act as a part of the maritime law is not limited by Congress to the Federal Courts, but the jurisdiction of the Federal Courts under the Act is

concurrent with that of the courts of the several states. *Engel* v. *Davenport*, 271 U. S. 33, 37, 38.

But Congress in pursuance of the legislative powers granted to it by the Constitution may limit the enforcement of rights created by the laws it enacts exclusively to the Federal Courts. It may impose qualifications upon the rights which it creates, which are binding upon the courts of the several states, where Congress permits concurrent jurisdiction.

In *Engel* v. *Davenport*, 271 U. S. 33, it was held, as appears in the syllabus, paragraph 3, that "the provision of the Employers' Liability Act that 'no action shall be maintained under this Act unless commenced within two years from the day the cause of action accrued' is one of substantive right, both setting a limit and necessarily implying that the action may be maintained, as a substantive right, within that period" (p. 38).

And Congress may properly preserve a privilege to the defendant, in connection with a right of action which it creates, as a reasonable qualification to the existence of the obligation which the Act creates, binding, by operation of the *supremacy clause* of the Constitution, upon the courts of the several states.

It is not a sound principle of construction that in matters subject to its exclusive control Congress must either confine jurisdiction of actions upon such matters exclusively to the Federal Courts, or part with all control over the remedy afforded.

The Naturalization Law permits the courts of the several states to exercise jurisdiction, under a Federal Statute, which confines the jurisdiction to aliens resident within the respective judicial districts of such courts.

The jurisdictional provisions of the statute are found in Title 8, Section 357, United States Code, which is as follows:

> "Sec. 357. Jurisdiction of naturalization courts. Exclusive jurisdiction to naturalize aliens as citizens of the United States is conferred upon the following specified courts: United States district courts in the states, United States district courts for the territories of Hawaii and Alaska, the Supreme Court of the District of Columbia; also all courts of record in any State or Territory having a seal, a clerk, and jurisdiction in actions at law or equity, in which the amount in controversy is unlimited.
>
> The naturalization jurisdiction of all courts herein specified, State, Territorial and Federal, shall extend only to aliens resident within the respective judicial districts of such courts."

In *Holmgren* v. *United States*, 217 U. S. 509, this Court made the following comment upon the power of the courts of the states to naturalize aliens (p. 517):

> "It is undoubtedly true that the right to create courts for the states does not exist in Congress. The Constitution provides (Art. III, Sec. 1) that the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. But it does not follow that Congress may not constitutionally authorize the magistrates or courts of a State to enforce a statute providing for a uniform system of naturalization, *and defining certain proceedings which, when complied with,* shall make the applicant a citizen of the United States. This Congress had undertaken to do in making provision for the naturalization of aliens to become citizens of the United States in a certain class of state courts—those of record having common law jurisdiction, a clerk and a seal." (Italics ours.)

In *Rump* v. *The Commonwealth*, 30 Pa. 475, the Supreme Court of Pennsylvania say (p. 477):

> "We need not notice the theoretic and practical conflict that occasionally appears between federal and state functions. To all orderly minds, the action of the state courts in the naturalization of foreigners, stands justified by the fact that it has had an almost undisputed growth since the organization of the Union.
>
> And our practice on this subject is fully justified by positive law. The stat. 13 Geo. 2, c. 7 (1740), followed by our provincial Act of 3d February 1743 (Hall & Sellers 197), made the naturalization of foreigners a subject of judicial cognisance before our state courts; and this jurisdiction has never been taken away. *The Constitution of the United States does not propose to change the jurisdiction, but only the rule of its exercise;* and the Acts of Congress expressly leave it to the courts.
>
> Naturalization is a judicial act: 4 Pet. 406. It is made so by positive law, and is essentially so in its nature; for it is a cause to be heard and decided on evidence, and involves a question of legal right. And although such cases arise under the constitution and laws of the United States, yet, *because these are part of the law of the land, and merely give the rule for the exercise of our admitted state functions,* our state courts may entertain this jurisdiction." (Italics ours.)

It clearly appears that while state courts in naturalization proceedings are exercising their own inherent jurisdiction, the federal statute operates to effectively qualify the right when exercised in the state tribunals. In no other way can the uniformity prescribed by the Constitution be made effective.

Under the Banking Act, suits against national banks may be brought in the courts of the several states, but the

jurisdiction is restricted to the courts of the county or city in which the banking association is located.

The jurisdictional provision is found in Title 12, Section 94, United States Code, which is as follows:

> "Venue of Suits. Actions and proceedings against any association under this chapter may be had in any district or Territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases."

This was Section 57 of the National Bank Act of June 3, 1864, subsequently incorporated in Section 5198 of the Revised Statutes by the Act of February 18, 1875, C. 80, Sec. 1; 18 Statutes at Large 320.

This Section was considered by this Court in the case of *Charlotte National Bank* v. *Morgan*, 132 U. S. 141. An action was instituted against the bank to recover a penalty for usury under the national banking law. Suit was brought in a county court of North Carolina, other than the court of the county in which the bank was located. Without claiming its privilege under the federal statute the bank defended on the merits and judgment was entered against it. It appealed to the Supreme Court of North Carolina, which affirmed. An appeal was then taken to this court on the ground that the only state court which could take cognizance of the action was that of the county in which the bank was located. In affirming the judgment this court said:

> "This exemption of national banking associations from suits in state courts, established elsewhere than in the county or city in which such associations were

located, was, we do not doubt, prescribed for the convenience of those institutions, and to prevent interruption in their business that might result from their books being sent to distant counties in obedience to process from state courts. *Bank of Bethel* v. *Pahquioque Bank*, 14 Wall. 383, 394; *Crocker* v. *Marine National Bank*, 101 Mass. 200. But, without indulging in conjecture as to the object of the exemption in question, *it is sufficient that it was granted by Congress, and, if it had been claimed by the defendant when appearing in the Superior Court of Cleveland County, must have been recognized.* The defendant did not, however, choose to claim immunity from suit in that court. It made defence upon the merits, and, having been unsuccessful, prosecuted a writ of error to the Supreme Court of the State, and in the latter tribunal, for the first time, claimed the immunity granted to it by Congress. This was too late. Considering the object as well as the words of the statute authorizing suit against a national banking association to be brought in the proper state court of the county where it is located, we are of opinion that *its exemption from suits in other courts of the same State was a personal privilege* that it could waive, and which, in this case, the defendant did waive, by appearing and making defence without claiming the immunity granted by Congress. No reason can be suggested why one court of a State, rather than another, both being of the same dignity, should take cognizance of a suit against a national bank, *except the convenience of the bank.* And this consideration supports the view that *the exemption of a national bank from suit in any state court except one of the county or city in which it is located is a personal privilege,* which it could claim or not, as it deemed necessary." (Italics ours.)

The contention that Congress has no power to regulate venue in state courts under any circumstances is unsound.

It arises from the mistaken conception that the federal and state sovereignties are foreign to each other. This Court, in *Claflin* v. *Houseman*, 93 U. S. 130, discusses the error in this conception. The Court say (p. 137):

> "If an act of congress gives a penalty to a party aggrieved, without specifying a remedy for its enforcement, there is no reason why it should not be enforced, if not provided otherwise by some act of Congress, by a proper action in a State court. The fact that a State court derives its existence and functions from the State laws is no reason why it should not afford relief; because it is subject also to the laws of the United States, and is just as much bound to recognize these as operative within the State as it is to recognize the State laws. The two together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent. The disposition to regard the laws of the United States as emanating from a foreign jurisdiction is founded on erroneous views of the nature and relations of the State and Federal governments."

The argument on behalf of the Petitioner fails to properly recognize the presence within the same territorial limits of dual sovereignties, each operating directly on the citizens, but one of them paramount over the other in respect to the subjects committed to its cognizance. Maritime legislation is within the exclusive province of Congress. It operates equally upon all persons engaged in maritime pursuits throughout the territorial limits of the United States. In the exercise of its legislative power Congress may create new rights for employees; it may

equally create privileges for employers, incident to the new right given the employees—limiting the enjoyment of the obligation created. There would seem to be no difference in principle between a limit to the time within which an action may be brought, in a state court, which has been held by this Court to be within the power of Congress, and a limit with respect to the district within which such action may be brought. And since the will of Congress is paramount within its allotted sphere of action both rights and privileges are binding upon all persons throughout the United States, including, by the very terms of the supremacy clause of the Constitution, the judges of state courts.

The rulings of this Court in *Tennessee Coal, Iron & Railroad Company* v. *George,* 233 U. S. 354, upon which the argument in support of the Petitioner's contention is largely based apply to a right of recovery very different in its legal incidents from the right which is asserted by the Petitioner. The principle involved in the decision in that case appears in the following quotation from the opinion (p. 360):

> "The courts of the sister State trying the case would be bound to give full faith and credit to all those substantial provisions of the statute which inhered in the cause of action or which name conditions on which the right to sue depend. But venue is no part of the right; and a State cannot create a transitory cause of action and at the same time destroy the right to sue on that transitory cause of action in any court having jurisdiction. That jurisdiction is to be determined by the law of the court's creation and cannot be defeated by the extraterritorial operation of a statute of another State, even though it created the right of action."

The distinguishing factor in the case is that the Alabama Statute had no extraterritorial effect. The cause of action was transitory. The Georgia Court had jurisdiction of both parties. In the adjudication of the case it was bound by the *full faith and credit clause* and by comity to adopt the *lex loci* for the purpose of deciding the issues. But in so doing it was applying Georgia law, not Alabama law. See *Frick* v. *Pennsylvania*, 268 U. S. 472, 493, 494. All the case decided is that Georgia need not under the full faith and credit clause adopt that part of the Alabama statute which attempted to restrict the enforcement of the rights created to its own courts. That provision had nothing to do with the right created, was unnecessary to a decision of the case, and, of course, could not *ex proprio vigore* affect persons without the territorial limits of Alabama. The question whether a privilege of exemption from suit except at the residence of the defendant follows a created right, of which the privilege is an incident, was not involved in that case.

The distinction between *Tennessee, etc.*, v. *George*, supra, and the case at bar lies in the fact that here the applicable law is that of the territorial sovereign and that it is being applied within the territorial limits of that sovereignty. It is true that it is not being applied in the sovereign's own courts, but it is being applied in courts which are bound to give full effect to it as the supreme law of the land. The personal privilege of one party to the relation affected by the statute has equal standing with the right of the other party. The privilege is an integral part of the supreme law and in giving effect to it the state court has in substance not been deprived of jurisdiction but has in fact exercised it.

III. The Limitation Upon the Power of the Congress Contended for by the Petitioner, and the Interpretations Placed Upon the Statute by Petitioner Would Destroy the Uniformity of the Maritime Law.

In *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, this court said (p. 216):

> "And plainly, we think, no such legislation (i. e., state legislation) is valid if it contravenes the essential purpose expressed by an act of Congress or works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations. This limitation, at the least, is essential to the effective operation of the fundamental purposes for which such law was incorporated into our national laws by the Constitution itself."

The Merchant Marine Act contemplates a uniform rule of venue in all actions brought under the act, and its general application throughout the United States. The venue provisions of the laws of the several states are many and varied. To give effect to them in cases under this act would contravene the essential purpose expressed by the Act itself, and would materially interfere with the uniformity of the maritime law in its interstate relations. Moreover the enforcement of the limitation upon the federal courts and the exemption therefrom of the state courts, would produce the absurd result of transferring a considerable body of litigation from the admiralty courts, which are most competent to handle it, and even from the federal law courts, presided over by judges with admiralty experience, and possessing in most instances a procedure better adapted to the exigencies of maritime litigation, into the state courts

which are less competent by experience and procedural facilities to determine the issues with full justice to both parties.

In *Engel* v. *Davenport*, supra, this Court said:

> "In the Panama Railroad Case, p. 392, it was held that the contention that the Merchant Marine Act did not possess the uniformity in operation essential to its validity as a modification of the maritime law, was unfounded since the Employer's Liability Act which it adopted, had a uniform operation, which could not be deflected from 'by local statutes or local views of common law rules.' The period of time within which an action may be commenced is a material element in such uniformity of operation. And plainly, Congress in incorporating the provisions of the Employer's Liability Act into the Merchant Marine Act did not intend to exclude a provision so material, and to permit the uniform operation of the Merchant Marine Act to be destroyed by the varying provisions of the state statutes of limitation."

For the foregoing reasons it is respectfully submitted that the Order and Judgment of the Supreme Court of Pennsylvania be affirmed.

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